

By: Ellis

S.B. No. 475

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the offense of tampering with a direct recording
3 electronic voting machine; providing criminal penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Chapter 33, Penal Code, is amended by adding
6 Section 33.05 to read as follows:

7 Sec. 33.05. TAMPERING WITH DIRECT RECORDING ELECTRONIC
8 VOTING MACHINE. (a) In this section:

9 (1) "Direct recording electronic voting machine" has
10 the meaning assigned by Section 121.003, Election Code.

11 (2) "Measure" has the meaning assigned by Section
12 1.005, Election Code.

13 (b) A person commits an offense if:

14 (1) the person accesses a computer, computer network,
15 computer program, computer software, or computer system that is a
16 part of a voting system that uses direct recording electronic
17 voting machines and by means of that access:

18 (A) prevents a person from lawfully casting a
19 vote;

20 (B) changes a lawfully cast vote;

21 (C) prevents a lawfully cast vote from being
22 counted; or

23 (D) causes a vote that was not lawfully cast to be
24 counted; and

1 (2) the outcome of the election that would result if
2 determined according to the count of the votes cast in the election
3 as affected by the person's action described by Subdivision (1) is
4 different from the true outcome of the election.

5 (c) For purposes of Subsection (b)(2), the outcome of an
6 election that would result if determined according to the count of
7 the votes cast in the election as affected by the person's action
8 described by Subsection (b)(1) is different from the true outcome
9 of the election if, but for the action described by Subsection
10 (b)(1):

11 (1) a different candidate would have been elected at
12 the election;

13 (2) for an election in which a candidate must receive a
14 majority vote to be elected:

15 (A) a candidate who failed to receive a majority
16 of the votes cast would have received a majority of the votes;

17 (B) a candidate who received a majority of the
18 votes cast would have failed to receive a majority of the votes;

19 (C) one or both candidates in a required runoff
20 election would be different; or

21 (D) a candidate who did not receive the highest
22 or second highest number of votes in the election and is not a
23 candidate in a required runoff election would have received
24 sufficient votes to be a tied candidate entitled to cast lots to be
25 a candidate in the runoff election;

26 (3) a measure that failed adoption at the election
27 would have been adopted; or

1 (4) a measure that was adopted at the election would
2 have failed adoption.

3 (d) An offense under this section does not require that the
4 votes as affected by the person's actions described by Subsection
5 (b)(1) actually be the votes used in the official determination of
6 the outcome of the election.

7 (e) An offense under this section is a felony of the first
8 degree.

9 (f) Notwithstanding Section 15.01(d), an offense under
10 Section 15.01(a) is a felony of the third degree if the offense the
11 actor intends to commit is an offense under this section.

12 SECTION 2. (a) The change in law made by this Act applies
13 only to an offense committed on or after the effective date of this
14 Act. For purposes of this section, an offense is committed before
15 the effective date of this Act if any element of the offense occurs
16 before the effective date.

17 (b) An offense committed before the effective date of this
18 Act is covered by the law in effect when the offense was committed,
19 and the former law is continued in effect for that purpose.

20 SECTION 3. This Act takes effect September 1, 2005.